Supreme Court, U.S.
FILED

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No. _____

SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1996

DAVID A. SOSNE, TRUSTEE

Petitioner,

V.

REINERT & DUREE, P.C., GARY ROBBINS, ROBBINS & ASSOCIATES, INC., ESTES & ESTES, INC. AND JAMES C. LANDES,

Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

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PETITION FOR WRIT OF CERTIORARI

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36 pp

QUESTIONS PRESENTED FOR REVIEW

The following questions arise out of the Respondents' willful violation of the automatic stay provisions of 11 U.S.C. §362, in that the Respondents were aware of the Debtor's bankruptcy filing and intentionally continued a post-petition execution against the Debtor to enforce a pre-petition judgment:

1. Whether a Bankruptcy Court has the power to issue a punitive damage award under 11 U.S.C. §362(h) for intentional violations of the automatic stay provisions of 11 U.S.C. §362 in proceedings involving corporate debtors?

2. Whether a Bankruptcy Court has the power to issue non-compensatory damage awards under 11 U.S.C. §105 for intentional violations of the automatic stay provisions of 11 U.S.C. §362?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were David A. Sosne, United States Chapter 7 Bankruptcy Trustee (the Plaintiff below and the Petitioner in this proceeding); Reinert and Duree, P.C. (a/k/a Reinert, Duree, Collins, P.C., a/k/a Reinert, Duree & Crane, P.C.), Gary Robbins, Robbins & Associates, Inc.*, Estes & Estes, Inc.* and James C. Landes (the Defendants below and the Respondents in this proceeding) and Just Brakes Corporate Systems, Inc. (the "Debtor").

* Petitioner is unaware of any parent company or wholly owned subsidiary of Robbins & Associates, Inc. or Estes and Estes, Inc.

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2. THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS ENTERED A DECISION WHICH PRECLUDES A BANKRUPTCY COURT FROM AWARDING NON-COMPENSATORY DAMAGES UNDER 11 U.S.C. §105 FOR INTENTIONAL VIOLATIONS OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362. THIS DECISION IS IN CONFLICT WITH DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL ON THIS SAME IMPORTANT MATTER. 20

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ORDERS AND OPINIONS BELOW

A. BANKRUPTCY COURT.

The July 11, 1994 Order, the November 30, 1994 Order and the November 30, 1994 Memorandum of the United States Bankruptcy Court, Eastern District of Missouri, Eastern Division entered in David A. Sosne, Trustee v. Reinert & Duree, P.C., et al. (In Re Just Brakes Corporate Systems, Inc.), Cause No. 91-46618-172 and Adv. No. 92-4384-172, are reproduced in the Appendix ("App") at pp. 17-46. Said Orders and Memorandum were officially reported as In Re Just Brakes Corporate Systems, Inc., 175 B.R. 288 (Bkrtcy. E.D. Mo. 1994).

B. DISTRICT COURT.

The March 29, 1996 Memorandum and Order of the United States District Court, Eastern District of Missouri, Eastern Division entered in David A. Sosne, Trustee v. Reinert & Duree, P.C., et al. (In Re Just Brakes Corporate Systems, Inc.), Cause No. 4:95 CV 226 SNL is reproduced in the App. at pp. 47-51.

C. UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

The March 13, 1997 Order of the United States Court of Appeals For The Eighth Circuit entered in David A. Sosne, Trustee v. Reinert & Duree, P.C., et al. (In Re Just Brakes Corporate Systems, Inc.), Cause No. 96-2078 is reproduced in the App. at pp.4-16.

JURISDICTIONAL STATEMENT

The Order of United States Court of Appeals For The Eighth Circuit sought to be reviewed was entered on March 13, 1997. On or about March 25, 1997 the Petitioner filed a Petition for Rehearing, En Banc, Or, In The Alternative, For A Rehearing By The Panel. On April 14, 1997, the United States Court of Appeals For The Eighth Circuit issued an Order Denying Petition For Rehearing And Suggestion For Rehearing En Banc. This Petition is filed within 90 days of the Order sought to be reviewed. This Court has jurisdiction under 28 U.S.C. §1254(1). In this proceeding, the constitutionality of 11 U.S.C. §105(a) may be drawn into question. The notification required by Supreme Court Rule 29.4(b) has been made.

STATUTORY PROVISIONS INVOLVED

This case involves 11 U.S.C. §362, 11 U.S.C. §105 and Article III of the United States Constitution. The text of these provisions is reproduced in the App.

STATEMENT OF THE CASE

This case pertains to deliberate actions taken by the Respondents to levy upon, seize and sell an asset of Just Brakes Corporation Systems, Inc. (the "Debtor") in flagrant disregard of the prohibition of 11 U.S.C. §362. This petition seeks a review of a decision of the United States

Court of Appeals for the Eighth Circuit which limits the authority of United States Bankruptcy Courts to award damages or remedy such violations.

On September 28, 1988, Respondents, by and through their attorneys, Respondent Reinert & Duree, P.C. (f/k/a Reinert, Duree & Crane, P.C.), recovered a judgment against the Debtor in the principal sum of approximately $133,083.00 plus interest in the Circuit Court of St. Louis County, Missouri (hereinafter the "State Court") in Cause No. 542798. (App. at p. 33) On January 10, 1991, the Debtor executed an "Assignment of Registration of a Mark" which purported to assign and transfer all its right, title and interest in the trademark/service mark "Just Brakes" (hereinafter the "Trademark") to F.G.R. Management, Inc. ("F.G.R."). On January 23, 1991, thirteen days after the purported transfer, Respondents obtained a temporary restraining order from the State Court in Cause No. 619506,

enjoining the Debtor and certain individuals named as statutory trustees of the Debtor from transferring the trademark to F.G.R. A separate proceeding was commenced in State Court against F.G.R., being Cause No. 620825, which sought similar relief and which was consolidated with Cause No. 619506. On February 21, 1991 a preliminary injunction was entered by the State Court restraining the Debtor from transferring, encumbering or disposing of in any manner assets of the Debtor, including the trademark.

On March 12, 1991, Respondents amended their previous petition for restraining order by filing an "Amendment by Interlineation" with the State Court. In their amendment, Respondents disclosed to the State Court that on January 10, 1991, the date of the purported assignment of the trademark, the Debtor was an insolvent corporation and had forfeited its corporate charter. In the amendment, the Respondents asserted that the only party

which would have had authority to take any actions on behalf of the Debtor on January 10, 1991 would have been the statutory trustees of the dissolved Debtor. Respondents further asserted that the January 10, 1991 assignment could not have had any legal effect since the Debtor had not been reinstated as a corporation in good standing. Respondents further asserted that even if the Debtor had been reinstated at that time, it was not before the date that the Respondents had secured their temporary restraining order on January 23, 1991. Respondents then asserted that "the purported assignment of January 10, 1991 is, as a matter of law, invalid". Respondents requested the state court to declare that the then current owner of the trademark was the Debtor.

On July 16, 1991 Respondents procured an order from the State Court barring the Debtor from transferring the trademark and further directing that the Debtor's trademark be sold at a sheriff's sale to satisfy the Respondents'

judgment against the Debtor. Implicit in this Order was a finding that the asset in question belonged to the Debtor, since F.G.R., the purported assignee, had been joined as a party pursuant to the consolidation of the separate proceedings.

On July 30, 1991, the Debtor filed a petition for reorganization under Chapter 11 of the Bankruptcy Code (the first bankruptcy). (App. at p. 33) This petition was filed prior to the Sheriff's sale of the Debtor's trademark pursuant to the July 16, 1991 order. (App. at p. 34) As the filing of the petition under Chapter 11 operated as a stay of all collection activity on the Debtor's pre-petition debt, including the Respondents' judgment, pursuant to the provisions of the automatic stay, 11 U.S.C. §362, the sale was halted. (Id.)

Upon motion of Respondents, on September 24, 1991 the Bankruptcy Judge, the Honorable James J. Barta,

dismissed the first bankruptcy and terminated the automatic stay. (Id.) As part of his "Findings and Conclusions" in the first bankruptcy, Judge Barta determined that:

> As of the commencement of this [Chapter 11] case, the Debtor held and continues to hold an interest in the trademark which is its claim for the avoidance of the pre-petition [Chapter 11] assignment to [F.G.R. Management, Inc.] This claim is an asset of the [Chapter 11] bankruptcy estate.

A copy of this order was mailed to Respondents. (App. at pp. 34 and 35)

After dismissal of the first bankruptcy case, the State Court directed that a sale of the Debtor's assets be conducted at 12:00 Noon on October 15, 1991 to satisfy Respondents' judgment against the Debtor. (App. at p. 35) The Debtor filed its Chapter 7 petition that commenced the instant case on October 15, 1991 at 9:12 a.m. (Id.) A file-stamped copy of the petition was faxed to the Respondent law firm prior to the scheduled foreclosure sale (Id.) Members of the

Respondent law firm were given oral notice of the commencement of the bankruptcy case at approximately 10:00 a.m., two hours prior to the scheduled sale. (App. at pp. 35 and 36)

Immediately before the sale, an attorney for F.G.R. objected to a continuation of the sale and informed Respondents, the Sheriff and the State Court of the Debtor's bankruptcy filing. (Id.) The Respondents ignored the bankruptcy filing and the automatic stay provisions of 11 U.S.C. §362 and continued with the foreclosure sale. (App. at pp. 36 and 37) The sale generated gross proceeds in the amount of $105,000. (Id.) On October 24, 1991, without having requested relief from the automatic stay, Respondents deliberately sought and obtained an order from the State Court that directed the payout of the net sale proceeds to Respondents. (App. at p. 37) The net amount of the sale proceeds received by the Respondent law firm was

$100,717.00 which sum was retained by them as fees for their serving in the State Court litigation. (Id.)

On September 18, 1992 the Chapter 7 Bankruptcy Trustee, Petitioner herein, commenced an adversary proceeding in the Bankruptcy Court for violation of the automatic stay and for other relief. (Id.) On July 11, 1994 the Honorable James J. Barta sustained the Petitioner's motion for summary judgment in part, finding that the Respondents had violated the automatic stay. (App. at p. 17) At that time, Judge Barta held open the issue as to whether Respondents' actions in violating the stay were "willful". (App. at pp. 24 and 25) Thereafter, on September 19, 1994, the Petitioner filed a second motion for summary judgment on the issue of "willfulness". (App. at p. 31) This motion was supported by affidavits and deposition testimony secured through discovery. On November 30, 1994 Judge Barta sustained the Petitioner's second motion for summary

judgment, finding that Respondents' violation of the automatic stay had been willful and that "the Defendant's willful violation of the automatic stay has prevented the trustee from liquidating the asset." (App. at p. 31) The Court found that the "appropriate measure of the money judgment here is the voidable transfer that resulted from the violation of the automatic stay." (App. at p. 41) Accordingly, the Court ordered Respondents to pay Petitioner (the Trustee of the bankruptcy estate) the sum of $100,717 (the net amount of the sale proceeds) for the willful violation of the automatic stay. (App. at p. 42)

On December 2, 1994, Respondents filed an appeal in U.S. District Court appealing the July 11, 1994 order and the November 30, 1994 order which granted summary judgment in favor of the Petitioner. On March 29, 1996 the Honorable Stephen N. Limbaugh of the United State District Court for the Eastern District of Missouri entered an

order affirming the ruling of the Bankruptcy Court. (App. at p. 47) On March 13, 1997, the United States Court of Appeals For The Eighth Circuit issued its order which affirmed the finding that the automatic stay had been willfully violated but reversed the lower courts' decision as to the propriety of the damage award and remanded the case for further proceedings. (App. at p. 4)

The Petitioner's adversary proceeding was commenced pursuant to Section 157(b)(2)(A), (G) and (O) of Title 28 of the United States Code. The bankruptcy court had jurisdiction over the parties and the matter pursuant to 28 U.S.C. Sections 151, 157 and 1334, and Rule 29 of the Local Rules of the United States District court for the Eastern District of Missouri. The bankruptcy court granted summary judgment pursuant to Fed.R.Civ.P. 56, made applicable by Fed.R.Bank.P. 7056. The summary judgment was entered on November 30, 1994. The Respondents filed

a Notice of Appeal to the United States District Court, Eastern District of Missouri, Eastern Division, on December 2, 1994. That court had jurisdiction pursuant to Fed.R.Bank.P. 8001 and 28 U.S.C. §158(a). The District Court affirmed the bankruptcy court decision on March 29, 1996. That decision was appealable to the Eighth Circuit pursuant to 28 U.S.C. §1291 and §1295. The Respondents filed their Notice of Appeal to the Eighth Circuit on April 1, 1996. The Eighth Circuit rendered its decision on March 13, 1997. This Petition is being filed pursuant to 28 U.S.C. §1254(1).

REASONS FOR GRANTING THE WRIT

1. THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS ENTERED A DECISION WHICH PRECLUDES A BANKRUPTCY COURT FROM AWARDING PUNITIVE DAMAGES UNDER 11 U.S.C. §362 FOR INTENTIONAL

VIOLATIONS OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362 IN PROCEEDINGS INVOLVING CORPORATE DEBTORS. THIS DECISION IS IN DIRECT CONFLICT WITH DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL ON THIS SAME IMPORTANT MATTER.

As pointed out by the Eighth Circuit, its opinion is in direct conflict with decisions of other circuits which have addressed this same important issue. (App. at p.11) The leading case in opposition to the Eighth Circuit decision is Budget Serv. Co. v Better Homes of Va., Inc., 804 F.2d 289 (4th Cir.1986). In Budget Serv. Co. the Fourth Circuit held that the term "individual" as set forth in 11 U.S.C. §362 (h) includes corporate debtors. The Fourth Circuit focused upon the importance of the automatic stay to the bankruptcy proceeding as echoed by the legislative history

of 11 U.S.C. §362. The legislative history of 11 U.S.C. §362 provides in part that:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy. House Report No. 95-595, 95th Cong. 1st Sess. 340-2 (1977); Senate Report No. 95-989, 95th Cong., 2d Sess. 54-55 (1978); reprinted in 1978 U.S. Code Cong. & Adm. News 5787 at 5840 and 6296-7. See Budget Serv. Co. at 292.

The Fourth Circuit found that section 362(h) must be read in conjunction with the rest of Section 362 and that its sanctions are not limited to the relief of an "individual" in the literal sense. Budget Service Co. at 292. The Court went on to state that it was "unlikely that Congress meant to give a remedy only to individual debtors against those who willfully violate the automatic stay provisions of the

[Bankruptcy] Code as opposed to debtors which are corporations..." Id. The Fourth Circuit's reasoning centered on the concept that a narrow reading of Section 362(h) would frustrate the purpose and policy of the automatic stay provision to give debtors a "fresh start" and to permit debtors to attempt repayment or reorganization plans. Id.[1]

The Budget Service Co. holding was followed by the Third Circuit in In Re Atlantic Business And Community Corp., 901 F. 2d 325 (3rd Cir. 1990). Citing the Budget Service case, the Third Circuit held that: "[a]lthough Section 362(h) refers to an individual, the

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[1] Implicit in the Fourth Circuit decision is the conclusion that this is one of the "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of the drafters." See U.S. v. Ron Pair Enterprises, Inc., 109 S.Ct. 1026, 1031 (1989). The Petitioner submits that there is the very important federal interest of preserving the integrity of the automatic stay provisions of the Bankruptcy Code which is present in the instant proceeding.

section has uniformly been held to be applicable to a corporate debtor." In Re Atlantic and Community Corp. at 329.

Other circuits have held that the section 362(h) remedy is available only to natural persons. The Court of Appeals for the Second Circuit , in In Re Chateaugay Corp., 920 F.2d 183 (2nd Cir. 1990), held that the remedy under 11 U.S.C. §362(h) is not available to corporate debtors, but instead is limited to debtors who are natural persons. The court reasoned that the context in which the term "individual" is used in section 362(h) suggests a natural person, not a partnership or corporation:

> We have not located any legislative history to suggest that §362(h) was meant to apply to "persons," rather than being confined to "individuals." The section was added as part of the Bankruptcy Amendments and Federal Judgeship Act Of 1984 Pub.L. No. 98-353,

> 98 Stat. 333, 352, 1984 U.S. Code Cong. & Admin. News (98 Stat) 333, 352 (1984). There is no published legislative history suggesting the possibility of a drafting error or other inadvertence. Appellee conceded during oral argument that there is no legislative history showing that the section was meant to apply to "persons." Therefore, this is not one of those "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters. Ron Pair Enterprises, Inc., 109 S.Ct. at 1031 (brackets in original). In Re Chateaugay Corp. at 185.

The Court of Appeals for the Ninth Circuit followed the Second Circuit and held in In Re Goodman, 991 F.2d 613 (9th Cir. 1993) that the term "individual" as used in 11 U.S.C. §362(h) is not broad enough to include corporations. More recently, the Eleventh Circuit in Jove Engineering, Inc. v. IRS, 92 F.3d 1539 (11th Cir. 1996) followed the Second and Ninth Circuit. In rendering the decision for which the Petitioner seeks review by a Writ of

Certiorari, the Eighth Circuit has also decided to follow the reasoning of the Second Circuit and Ninth Circuit.

Another line of cases which address the issue of whether a bankruptcy trustee is an individual within the meaning of 362(h) further illustrates the divergence among the circuits on the scope of section 362(h) and the need for guidance. In In Re Pace, 67 F.3d 187 (9th Cir. 1995), the Ninth Circuit was presented with the issue of whether a court appointed panel Trustee of an individual Chapter 7 proceeding could recover damages under 11 U.S.C. §362(h). The Ninth Circuit read the term "individual" contained in 11 U.S.C. §362(h) narrowly and held that a trustee of an individual bankruptcy estate could not recover damages under Section 362(h). As stated by the Ninth Circuit:

> There is no controlling authority from this or any other circuit that answers the question posed. Even the BAP split on this issue,

> with one Judge concluding that the trustee was an individual for purposes of section 362(h) because he was an individual representing the estate of an individual, while the other two judges held that, because a trustee represents a thing and not a natural person, a trustee is not an individual entitled to recover damages under section 362(h). In Re Pace, at 192.

The Ninth Circuit concluded that the Chapter 7 trustee was not an "individual" entitled to recover attorneys fees as damages for a willful violation of the automatic stay. The rationale of the Court was that any harm suffered in the form of costs and attorneys fees was actually incurred by the bankruptcy estate, not by a trustee as a natural person. This narrow reading of Section 362(h) would preclude bankruptcy courts from awarding sanctions under Section 362(h) even in cases involving a chapter 7 trustee of an individual bankruptcy estate. The only application of Section 362(h) under this analysis, would be for individual chapter 13 proceedings.

2. THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS ENTERED A DECISION WHICH PRECLUDES A BANKRUPTCY COURT FROM AWARDING NON-COMPENSATORY DAMAGES UNDER 11 U.S.C. §105 FOR INTENTIONAL VIOLATIONS OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362. THIS DECISION IS IN DIRECT CONFLICT WITH DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL ON THIS SAME IMPORTANT MATTER.

The United States Bankruptcy Court For The Eastern District of Missouri, Eastern Division, the United States District Court, Eastern District of Missouri and the United States Court of Appeals For The Eighth Circuit are all in agreement that the Respondents violated the automatic stay provisions of 11 U.S.C. Section 362(a)(6) (App. at pp. 8-10, 23 and 50) which provides:

> ...[a] petition filed under... this title... operates as a stay... of (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

As stated by the Eighth Circuit: "After the sale, [Respondents] applied to the state court and received the sale proceeds out of escrow, clearly an act to collect on their judgment." (App. at pp. 9 and 10) Although it finds that a clear violation of the automatic stay occurred, the Eighth Circuit concluded that"... Congress has conferred no power to punish for a violation of §362(a), other than the punitive damage authority in §362(h)." (App. at pp. 12 and 13) Having concluded that the Bankruptcy Courts have no power to punish violations of the automatic stay provisions of §362(a), the Eighth Circuit went on to hold that §362(a) buttressed by §105(a) confers broad equitable powers to remedy adverse effects of automatic stay violations. (App. at pp. 13 and 14) Having recognized this

power, however, the Eighth Circuit fails to adequately define the remedy available to the Bankruptcy Court absent a finding of actual damages. Under this analysis, the extent of the Bankruptcy Courts' power to remedy violations of the automatic stay provisions of Section 362 remains unclear.

Although the Eighth Circuit focuses upon the "broad equitable power [of the bankruptcy court] to remedy adverse effects of automatic stay violations", the issue involved is essentially the authority of the Bankruptcy Court to award damages for contempt. The law of contempt, as applied to Bankruptcy Courts, is unsettled. Appellate courts are divided on the validity of the Bankruptcy Court's authority over the various forms of contempt.

In Jove Engineering, Inc. v. I.R.S., 92 F.3d 1539 (11th Cir. 1996), the Eleventh Circuit addressed the issue of the authority of the Bankruptcy Court to award damages for contempt. The Eleventh Circuit distinguished the Bankruptcy

Court's inherent contempt powers from the statutory contempt powers derived from 11 U.S.C. Sec. 105. The Eleventh Circuit also distinguished between coercive or civil contempt sanctions from punitive or criminal sanctions. As stated by the Eleventh Circuit, "The purpose of civil contempt sanctions is to (1) compensate the complainant for losses and expenses it incurred because of the contemptuous act, and (2) coerce the contemnor into complying with the court order". Jove Engineering, Inc. at 1557. The Eleventh Circuit distinguished punitive damages which are damages which are imposed retrospectively for a completed act of disobedience, which cannot be avoided or abbreviated by the contemnor through later compliance.

The Eleventh Circuit held that the Bankruptcy Court's inherent authority is limited to civil contempt and that: "sanctions imposed for civil contempt to coerce compliance 'cannot be any greater than necessary to ensure

such compliance' and may not be so excessive as to be punitive in nature". Jove Engineering, Inc. at 1558. However, in addressing the Bankruptcy Court's statutory contempt authority, the Eleventh Circuit concluded that under 11 U.S.C. §105, the bankruptcy court could issue punitive damage awards:

> Section 105(a) states "[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a) (emphasis added). ... Section 105 uses the broad term "any" which encompasses all forms of orders including those that award monetary relief. The term "any" should be given this broad construction under the "settled ruled that a statute must, if possible, be construed in such fashion that every word has some operative effect" United States v. Nordic Village, 503 U.S. 30, 36, 112 S.Ct. 1011, 1015, 117 L.Ed.2d 181 (1992). The broad term "any" is only limited to those orders that are "necessary or appropriate" to carry out the Bankruptcy Code. Therefore, the plain meaning of §105(a) encompasses any type of order, whether injunctive, compensatory or punitive, so long as it is "necessary or appropriate to carry out the

> provisions" of the Bankruptcy Code. Jove Engineering, Inc. at 1554.

In In Re Ragar, 3 F.3d 1174 (8th Cir. 1993), the Eighth Circuit was presented with the issue of whether a bankruptcy court has the authority to issue an order of criminal contempt. The facts of the case were that an attorney violated a court order which barred him from representing the debtor. The bankruptcy court held the attorney in criminal contempt since he continued to represent the debtor and file pleadings on her behalf after the bankruptcy court's initial order. The bankruptcy court assessed a fine of $950 and further held that:

> [t]his order of contempt shall become effective as a final order ten days after service of the order on Brown unless, within the ten-day period, Brown serves and files with the bankruptcy clerk an objection to this order of contempt as provided by Federal Rule of Bankruptcy Procedure 9033(b).
>
> If an objection is filed, this Order shall be subject to review by the District Court

pursuant to Federal Rule of Bankruptcy Procedure 9003. In Re Ragar at 1177.

Citing the plain meaning of the statute, the Eighth Circuit concluded that 11 U.S.C. §105 authorized at least as much as was done in that proceeding. However, the Eighth Circuit in the present case determined that Bankruptcy Courts do not have the authority to issue punitive awards.

The Fifth Circuit reached a completely different conclusion. In Matter of Hipp, Inc., 895 F.2d 1503 (5th Cir. 1990) the Fifth Circuit concluded that: "Bankruptcy Courts have no inherent or statutory power and none is granted them by 11 U.S.C. Section 105 or by 28 U.S.C. Section 157 or by Rule 9020 - to preside over Section 401(3) criminal contempt trials for violation of bankruptcy court orders or to acquit, convict or sentence for such offenses." Matter of Hipp, Inc. at 1521.

In addition to the confusion over whether bankruptcy courts have the authority to issue punitive awards under 11 U.S.C. §105, there is also uncertainty and conflict among the various Circuit Court of Appeal decisions which address the question of whether Bankruptcy Courts have the authority to issue orders and damage judgments for civil contempt. See for example, In Re Skinner, 917 F.2d 444 (10th Cir. 1990) (holding that 11 U.S.C. Section 105(a) grants bankruptcy courts civil contempt power and that this jurisdictional grant is constitutional); In Re Walters, 868 F.2d 665 (4th Cir. 1989) (holding that Congress has authorized Bankruptcy Courts' civil contempt power and that this authorization is not a violation of separation-of-powers); In Re Sequoia Auto Brokers, Ltd., 827 F.2d 1281 (9th Cir. 1987) (holding that Congress did not authorize bankruptcy court jurisdiction over civil contempts); In Re Pace, 67 F.3d 187

(9th Cir. 1995) (holding that a trustee can recover damages in the form of costs and attorney's fees under Section 105(a) as a sanction for ordinary civil contempt).

CONCLUSION

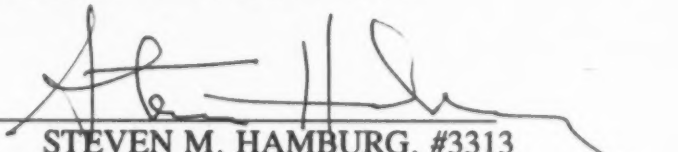
In conclusion, the Petitioner submits that this proceeding raises very important issues related to the automatic stay provisions of 11 U.S.C. §362. The automatic stay provisions provide one of the central procedural mechanisms necessary to provide debtors with a fresh start and to allow trustees to administer on a debtor's assets for the benefit of all creditors. There are conflicting decisions among the Circuit Courts of Appeal as to the authority of the Bankruptcy Courts to enforce the automatic stay provisions. There is a conflict with respect to the Bankruptcy Courts' authority under 11 U.S.C. §362(h), as applied to corporate debtors, and a conflict with respect to the Bankruptcy Courts' authority under 11 U.S.C. §105 as

it relates to civil and criminal contempt powers. The Petitioner believes that the facts of this proceeding present the United States Supreme Court with a good opportunity to provide clarification and resolve the conflicting authority.

Wherefore, the Petitioner respectfully requests that this Court issue a writ of certiorari to review the March 13, 1997 Order of the United States Court of Appeals for the Eighth Circuit entered in Cause No. 96-2078.

Respectfully submitted

SUMMERS, COMPTON, WELLS & HAMBURG
PROFESSIONAL CORPORATION

By 

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